

REMARKS

At the time of the Office Action, Claims 1-100 were pending in the application. Of the above, Claims 2-18, 23-33, 48-71, 77-85, and 99 have been withdrawn from consideration and Claims 1, 19-22, 34-47, 72-76, 86-98, and 100 have been rejected. To advance prosecution of this case, Applicants amend Claims 1, 19-22, 24-28, 40-42, 45-57, 72-76, 86-98, and 100. Applicants do not admit that any amendments are necessary due to any prior art or any of the Examiner's rejections. Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Rejections - 35 U.S.C. § 112

The Examiner rejects Claims 39, 40, 91, and 92 under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully request reconsideration and allowance of Claims 39, 40, 91, and 92.

In rejecting Claims 39, 40, 91, and 92, the Examiner argues that the term "substantially" is a "relative term which renders the claim indefinite because the term 'substantially' is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention." (Office Action; page 2). Applicants respectfully disagree. The essential inquiry pertaining to the definiteness requirement is whether the claims set out and circumscribe subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (a) the content of the particular application disclosure; (b) the teachings of the prior art; and (c) the claim interpretation that would be given by one possessing ordinary skill in the art at the time the invention was made. MPEP § 2173.02. Furthermore, the test for indefiniteness under Section 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." MPEP § 2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)).

Applicants respectfully submit that the meaning of Claims 39, 40, 91, and 92 would certainly be clear to one of ordinary skill in the art at the time of the invention. Applicants

note that Claims 40 and 92, as amended, do not comprise the term “substantially.” In addition, Applicants respectfully submit that those of ordinary skill in the art would understand “substantially equal to the first pre-determined time period” as recited in Claim 39 and amended Claim 92. Applicants direct the Examiner’s attention to at least Figure 4 and ¶¶ 71-74 of the Specification, which provide example descriptions of particular embodiments.<sup>1</sup> Because Claims 39, 40, 91, and 92 comply with the requirements of 35 U.S.C. 112, second paragraph, Applicants respectfully request reconsideration and allowance of Claims 39, 40, 91, and 92.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejects Claims 1, 19, 20, 34-38, 41-47, 73, 74, 86-90, 93-97 and 100 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,243,691 B1 issued to Fisher, et al. (“*Fisher*”) in view of U.S. Patent Application Publication No. 2003/0078793 A1 to Toth (“*Toth*”). Applicants respectfully request reconsideration and allowance of Claims 1, 19, 20, 34-38, 41-47, 73, 74, 86-90, 93-97 and 100.

*Claims 1 and 47*

The *Fisher-Toth* combination fails to support the rejection of amended Claim 1 for at least two reasons. First, the cited references fail to teach, suggest, or disclose a processor operable to “determine a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1. Second, the cited references fail to teach, suggest, or disclose displaying “the first animated character as an animated auctioneer operable to announce a current bid for an item” as recited in amended Claim 1.

First, the cited references fail to teach, suggest, or disclose a processor operable to “determine a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1. In rejecting Claim 1, the Examiner relies on both *Fisher* and *Toth*. *Fisher* discloses an electronic auction system that “allows a group of bidders to interactively place bids over a computer or communications network” and that “updates the bidders with the current auction status information.” (*Fisher*; col. 5, ll. 42-48). To provide updates to the bidders, the electronic auction system in *Fisher* (1) posts the

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<sup>1</sup> This portion of the Specification is cited merely to illustrate various embodiments and is not intended to limit the pending claims to any particular embodiment.

highest bid on an electronic catalog page and (2) sends e-mail notifications to the bidders that have been outbid by the highest bid. (*Fisher*; col. 6, ll. 7-26). Notably, *Fisher* fails to teach, suggest, or disclose storing “a profile associated with the first user” as recited in amended Claim 1. In addition, *Fisher* fails to teach, suggest, or disclose determining “a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1.

Like *Fisher*, *Toth* fails to teach, suggest, or disclose the foregoing aspects of amended Claim 1. *Toth* describes a “computerized restaurant system” that allows patrons to use a touch sensitive screen or other device at their table to order food, pay their bill, play games, or check movie times. (*Toth*; ¶¶ 63, 78, 89, 90). *Toth* explains that the touch sensitive screen may display a cartoon character. In particular, *Toth* states:

This cartoon character is a ‘virtual server’ which is animated and may interact with the customer through cartoon balloons or voice synthesis. The virtual server assists users in operating the system, offers suggestions, and personalizes the dining experience. The virtual server can be an effective sales device when it is programmed to suggestively sell, or upsell, to the diners. For example, once the main course arrives at the [table], the virtual server can wait a period of time and then suggest dessert or coffee.

(*Toth*; ¶ 72). *Toth* further explains that the cartoon character may help the patron to navigate the electronic restaurant system. *Toth* states:

It is envisioned that a customer could drag the character over the function that requires further explanation whereby the character could verbally prompt the customer on how to navigate the system and order items or whatever the customer desires....Preferably, the character would be related to the restaurant somehow and be humorous and friendly to use.

(*Toth*; ¶ 35). Thus, *Toth* discloses a restaurant system with a single cartoon character that is merely “related to the restaurant somehow.” (*Toth*; ¶ 35). *Toth* fails to teach, suggest, or disclose storing data regarding “a plurality of animated characters” as recited in amended Claim 1. (Emphasis added). In addition, *Toth* fails to teach, suggest, or disclose determining “a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1. (Emphasis added). Because the cited references fail to teach, suggest, or disclose the foregoing aspects of amended Claim 1, the cited references fail to support the rejection.

Second, the cited references fail to teach, suggest, or disclose displaying “the first animated character as an animated auctioneer operable to announce a current bid for an item” as recited in amended Claim 1. As explained above, *Fisher* discloses an electronic auction system that “allows a group of bidders to interactively place bids over a computer or communications network.” (*Fisher*; col. 5, ll. 42-48). The system in *Fisher* uses electronic catalog pages and e-mail messages to notify bidders of the highest bid. There is nothing in *Fisher* that teaches, suggests, or discloses an “animated character” or displaying “the first animated character as an animated auctioneer” as recited in amended Claim 1.

*Toth* also fails to teach, suggest, or disclose the foregoing aspects of amended Claim 1. As explained above, *Toth* explains that a touch sensitive screen at a restaurant table may display a cartoon character that “assists users in operating the system, offers suggestions, and personalizes the dining experience.” (*Toth*; ¶ 72). Notably, *Toth* makes no mention of an auction -- the electronic restaurant system in *Toth* merely allows patrons to order food, play games, check movie times, and perform other such functions. (*Toth*; ¶¶ 63, 78, 89, 90). A cartoon character that merely explains navigation functions and suggests food items, as described in *Toth*, fails to teach, suggest, or disclose an “animated auctioneer operable to announce a current bid for an item” as recited in amended Claim 1. (Emphasis added). Because the cited references fail to teach, suggest, or disclose this aspect of amended Claim 1, the cited references fail to support the rejection. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of amended Claim 1.

In rejecting Claim 47, the Examiner employs the same rationale used above with respect to Claim 1. Accordingly, for at least the reasons stated above with respect to amended Claim 1, Applicants respectfully request reconsideration and allowance of amended Claim 47.

*Claims 19, 20, 34-38, 41-46, 73, 74, 86-90, 93-97, and 100*

Claims 19, 20, 34-38, 41-46, 73, 74, 86-90, 93-97, and 100 depend from independent claims shown above to be allowable. In addition, these claims recite further elements not taught, suggested, or disclosed by the cited references. For example, the cited references fail to teach, suggest, or disclose determining “a second animated character, from the plurality of animated characters, based at least in part on the profile associated with the first user” and

causing “the first workstation to display the second animated character as an animated bid spotter operable to solicit bids from the first user” as recited in amended Claim 19. As shown above, the cited references fail to teach, suggest, or disclose storing data regarding a “plurality of animated characters” and determining “a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1. The cited references also fail to teach, suggest, or disclose determining “a second animated character...based at least in part on the profile associated with the first user” as recited in amended Claim 19. In addition, the cited references fail to teach, suggest, or disclose displaying “the *second* animated character as an *animated bid spotter*” as recited in amended Claim 19. (Emphases added). As explained above, *Toth* makes no mention of an auction. Accordingly, the cartoon character in *Toth*, which merely explains navigation functions and suggests food items, fails to teach, suggest, or disclose “an animated bid spotter operable to solicit bids from the first user” as recited in amended Claim 19. Because the cited references fail to teach, suggest, or disclose at least the foregoing aspects of amended Claim 19, the cited references fail to support the rejection.

In addition, the cited references fail to teach, suggest, or disclose determining “a second animated character, from the plurality of animated characters, based at least in part on the profile associated with the second user” and causing “the second workstation to display the second animated character as an animated auctioneer operable to announce a current bid” as recited in amended Claim 20. As shown above, the cited references fail to teach, suggest, or disclose storing data regarding a “plurality of animated characters” and determining “a first animated character based at least in part on the profile associated with the first user” as recited in amended Claim 1. In addition, the cited references fail to teach, suggest, or disclose determining “a second animated character...based at least in part on the profile associated with the second user” and causing “the second workstation to display the second animated character as an animated auctioneer operable to announce a current bid” as recited in amended Claim 20. Because the cited references fail to teach, suggest, or disclose these aspects of amended Claim 20, the cited references fail to support the rejection.

For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 19, 20, 34-38, 41-46, 73, 74, 86-90, 93-97, and 100.

*Functional Relationship of Elements*

In the Office Action, the Examiner asserts that Claims 20, 37, 38, and 41-45 comprise limitations that “are deemed to be nonfunctional descriptive material.” (Office Action; pages 5-6). In rejecting these claims, the Examiner relies on *In re Gulack*, 703 F.2d 1381, 1385, 217 U.S.P.Q. 401, 404 (Fed. Cir. 1983). This rejection is improper because the Examiner misinterprets the holding of the Federal Circuit’s decision in *In re Gulack*. In that case, various claims were directed to an apparatus comprising a band upon which a particular sequence of numbers was printed. *Id.* at 1382-83. During prosecution, the Examiner rejected the claims and argued that the printed digits lacked any functional relationship to the band. *Id.* at 1384. The Federal Circuit, however, reversed the Examiner’s rejection and allowed the claims. In reversing the rejection, the Federal Circuit stated:

Differences between an invention and the prior art cited against it *cannot* be ignored merely because those differences reside in the content of the printed matter. Under section 103, the board *cannot* dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole.

*Id.* at 1385. The Federal Circuit further stated that “the bare presence or absence of a specific functional relationship, without further analysis, is *not* dispositive of obviousness.” *Id.* at 1386. The Federal Circuit then concluded that the claims were allowable. *Id.* at 1386-87.

Like the claims in *In re Gulack*, Claims 20, 37, 38, and 41-45 are allowable. When each of these claims are “read as a whole,” it is clear that the elements disputed by the Examiner are functionally related to one or more other elements of the pending claims. For example, the “plurality of animated characters,” as recited in amended Claim 20, is functionally related to one or more elements of the pending claims. Indeed, amended Claim 20 recites that “the processor is further operable to...determine a second animated character, from the plurality of animated characters, based at least in part on the profile associated with the second user...and cause the second workstation to display the second animated character as an animated auctioneer operable to announce a current bid.” Furthermore, amended Claim 19 recites that “the processor is further operable to...determine a second animated character, from the plurality of animated characters, based at least in part on the profile associated with the first user...and cause the first workstation to display the second animated character as an animated bid spotter operable to solicit bids from the first user.” Clearly, the “plurality of

“animated characters” recited in amended Claim 20 is functionally related to one or more other elements of the pending claims. Because the pending claims comply with the holding of *In re Gulack*, Applicants respectfully request reconsideration and allowance of Claims 20, 37, 38, and 41-45.

*Claims 21, 22, 72, 75, 76, and 98*

The Examiner rejects Claims 21, 22, 72, 75, 76, and 98 under 35 U.S.C. 103(a) as being unpatentable over *Fisher* in view of *Toth* and further in view of Official Notice (“Official Notice”). Applicants traverses this rejection and respectfully request reconsideration and allowance of Claims 21, 22, 72, 75, 76, and 98.

Claims 21, 22, 72, 75, 76, and 98 depend from independent claims shown above to be allowable. In addition, Applicants traverse the Examiner’s reliance on Official Notice to reject Claims 21, 22, 72, 75, 76, and 98. In particular, in rejecting Claim 21, the Examiner states that “Official Notice is taken that it is old and well known in the art to seek a confirmation of a transaction before processing the transaction.” (Office Action; page 9). The Examiner provides no documentary evidence to support this assertion of Official Notice. Accordingly, Applicants traverse the Examiner’s assertion and respectfully submit that “the examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained.” MPEP § 2144.03(C). If the Examiner is relying on personal knowledge as support for the foregoing assertion, then “the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.” MPEP § 2144.03(C). Otherwise the rejection must be withdrawn.

In rejecting Claim 72, the Examiner states that “Official Notice is taken that it is old and well known in the art to allow a user to retract a bid before a certain time period has elapsed.” (Office Action; page 10). The Examiner provides no documentary evidence to support this assertion of Official Notice. Accordingly, Applicants traverse the Examiner’s assertion. As explained above, the Examiner must provide documentary evidence, an affidavit, or a declaration to support the foregoing assertion. MPEP § 2144.03(C). Otherwise the rejection must be withdrawn.

In rejecting Claim 98, the Examiner states that “Official Notice is taken that it is old and well known in the art to request a username and password from a user.” (Office Action;

pages 10-11). Because the Examiner provides no documentary evidence to support this assertion of Official Notice, Applicants traverse this rejection. As explained above, the Examiner must provide documentary evidence, an affidavit, or a declaration to support the foregoing assertion. MPEP § 2144.03(C). Otherwise the rejection must be withdrawn.

For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 21, 22, 72, 75, 76, and 98.

CONCLUSION

For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Applicants' undersigned representative at (212) 829-5407.

Respectfully submitted,

November 15, 2006

Date

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